

GUIDELINES FOR THE ACCELERATED SALES TAX PAYMENT

May 11, 2011

Effective beginning with the accelerated sales tax payment due in June, 2011, legislation enacted in the 2011 Session of the General Assembly, House Bill 1500 (*Acts of Assembly 2011, Chapter 890*), increases the annual threshold for dealers and direct payment permit holders (“Dealers”) who are required to make an accelerated sales tax payment from \$1 million of taxable sales and/or purchases to \$5.4 million of taxable sales and/or purchases.

These Guidelines have been revised to conform to this legislative change and are effective for the additional payment made by Dealers who are required to make an accelerated sales tax payment in June, 2011.

House Bill 29, the Appropriations Act for the 2008-10 Biennium (*Acts of Assembly 2010, Chapter 872*), and House Bill 30, the Appropriations Act for the 2010-12 Biennium (*Acts of Assembly 2010, Chapter 874*), required Retail Sales and Use Tax dealers and direct payment permit holders (“Dealers”) with \$1 million or more in taxable sales and purchases in the previous year to make an additional payment in June of each year. Beginning in 2011, House Bill 1500 (*Acts of Assembly 2011, Chapter 890*) increases the threshold to taxable sales and/or purchases of \$5.4 million or greater in the previous fiscal year. Dealers meeting this threshold are required to make a payment in June equal to 90 percent of his Retail Sales and Use Tax liability for June of the previous year. Each affected Dealer will be entitled to take a credit for the amount of the accelerated sales tax payment on his payment for June of the current year due July 20. The Department of Taxation (“TAX”) will notify each affected Dealer in May of each year of his obligation to make an accelerated sales tax payment. On or about June 1, TAX will provide each affected dealer with payment instructions, a payment voucher for the additional payment, and a worksheet to assist the dealer in reconciling his payment for his June tax liability due in July with the accelerated sales tax payment.

The General Assembly has declared its intent that this accelerated sales tax payment requirement be phased out beginning in Fiscal Year 2013 with the payment amount for June 2013 being reduced to 85 percent of the sales and purchases for the previous June and that the payment amount should continue to be reduced until fully eliminated not later than June 2021. (Source: Item § 3-5.08, *Acts of Assembly 2011, Chapters 890*)

These guidelines (“Guidelines”) are issued by TAX to provide guidance to taxpayers regarding the accelerated sales tax payment. These guidelines are exempt from the provisions of the Administrative Process Act (*Va. Code § 2.2-4000 et seq.*) and only apply to the additional payment made by Dealers who are subject to the accelerated sales tax payment requirement. Unless noted otherwise below, the applicable Retail Sales and Use Tax Regulations (*23 Virginia Administrative Code (VAC) 10-210-10 et seq.*) continue to apply. To the extent that the legislative change requiring the

accelerated sales tax payment conflicts with the regulations, the legislation supersedes the regulations, and these Guidelines, developed pursuant to the legislation, should be followed. As necessary, additional guidelines will be published and posted on TAX's web site, www.tax.virginia.gov.

Accelerated Sales Tax Payment Requirement

Effective calendar year 2011, any Dealer having taxable sales and/or purchases of \$5.4 million or greater during the 12-month period beginning July 1 and ending June 30 of the immediately preceding calendar year must make a payment equal to 90 percent of his Retail Sales and Use Tax liability for the previous June on or before each June 30 if paying by electronic funds transfer. If payment is made by another method, the payment must be made on or before June 25. In the event that either June 25 or June 30 falls on a Saturday or Sunday, any payment made on or before the next succeeding business day will be considered timely. For the June 2011 accelerated sales tax payments, those payments made other than by electronic funds transfer are due June 27, since June 25 falls on a Saturday. Dealers who are required to remit the Retail Sales and Use Tax by electronic funds transfer pursuant to *Va. Code* § 58.1-202.1 are also required to remit the accelerated sales tax payment by electronic funds transfer. Dealers who are not currently required to remit the Retail Sales and Use Tax by electronic funds transfer may remit the accelerated sales tax payment by either electronic funds transfer or by mail. (Source: Item § 3-5.08, *Acts of Assembly* 2011, Chapter 890)

Under prior law, the accelerated sales tax payment requirement for 2010 applied to any Dealer having taxable sales and/or purchases of \$1 million or greater during the prior fiscal year. (Source: *Acts of Assembly* 2010, Chapters 872 and 874)

Affected Dealers

For the purposes of the Accelerated Sales Tax Payment, "Dealer" includes every person who is required to collect and remit sales tax and also every person who is required to remit use tax to the Commonwealth.

Under current law, in general, and with limited exceptions, every Dealer must file his Retail Sales and Use Tax return and remit the tax due for transactions occurring during the month on or before the twentieth day of the following month. (Source: *Va. Code* § 58.1-615)

The applicability of the accelerated sales tax to each Dealer will be determined each year by TAX based on the Dealer's taxable sales or purchases in the previous fiscal year (July 1 – June 30) without regard to whether the Dealer was subject to the accelerated sales tax payment in the past. Taxable sales or purchases will be computed without regard to the number of certificates of registration held by the Dealer. The accelerated sales tax payment will not apply to persons who are required to file only a Form ST-7, Consumer's Use Tax Return. In addition to the sales and purchases

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reported by each dealer on his returns, a Dealer's taxable sales and purchases includes those sales and purchases assessed to the Dealer by TAX for the previous fiscal year, including audit assessments and other adjustments to returns for the previous fiscal year.

Example 1:

Dealer is a retailer who holds a certificate of registration for 8 locations and files one consolidated return for all locations. Each location had taxable sales of \$750,000 in Fiscal Year 2010 (the 12-month period beginning July 1, 2009, and ending June 30, 2010), for a total of \$6 million in Fiscal Year 2010. Each location had taxable sales of \$50,000 in Fiscal Year 2011 (the 12-month period beginning July 1, 2010, and ending June 30, 2011), for a total of \$400,000 in Fiscal Year 2011. Each location had taxable sales of \$875,000 in Fiscal Year 2012 (the 12-month period beginning July 1, 2011, and ending June 30, 2012), for a total of \$7 million in Fiscal Year 2012.

In June, 2011, Dealer would be required to make an accelerated sales tax payment of 90 percent of his entire Retail Sales and Use Tax liability, less any applicable dealer discount, for June 2010. In June, 2012, Dealer would not be required to make an accelerated sales tax payment. In June, 2013, the intent of the General Assembly is that the Dealer would be required to make an accelerated sales tax payment of 85 percent of his entire Retail Sales and Use Tax liability, less any applicable dealer discount, for June, 2012.

Example 2:

Dealer is a retailer who holds certificates of registration for 8 locations and files separate returns for each location. Each location had taxable sales of \$750,000 in Fiscal Year 2010 (the 12-month period beginning July 1, 2009, and ending June 30, 2010), for a total of \$6 million in Fiscal Year 2010. Each location had taxable sales of \$50,000 in Fiscal Year 2011 (the 12-month period beginning July 1, 2010, and ending June 30, 2011), for a total of \$400,000 in Fiscal Year 2011. Each location had taxable sales of \$875,000 in Fiscal Year 2012 (the 12-month period beginning July 1, 2011, and ending June 30, 2012), for a total of \$7 million in Fiscal Year 2012.

Regardless of the number of certificates of registration held by a Dealer, TAX will add together all of the taxable sales and purchases of the Dealer when determining whether the Dealer is subject to the accelerated sales tax payment. In June, 2011, Dealer would be required to make an accelerated sales tax payment of 90 percent of his entire Retail Sales and Use Tax liability, less any applicable dealer discount, for June 2010. In June 2012, Dealer would not be required to make an accelerated sales tax payment. In June, 2013, the intent of the General Assembly is that the Dealer would be required to make an accelerated sales tax payment of 85 percent of his entire Retail Sales and Use Tax liability, less any applicable dealer discount, for June, 2012.

Exceptions

A Dealer who would otherwise be required to make an accelerated sales tax payment but is no longer in business, will not be required to make the accelerated sales tax payment. In making the determination regarding whether a Dealer is exempt from the requirement to make an accelerated tax payment, a corporate or similar reorganization that simply results in the use of a new Virginia Retail Sales and Use Tax registration number or Federal Employer Identification Number (FEIN) will not relieve the Dealer from having to make an accelerated sales tax payment. Likewise, Dealers who have filed a petition for a bankruptcy reorganization on or before June 30 would not be exempted from the requirement of making an accelerated sales tax payment.

Example 3:

Dealer had taxable sales of \$5.4 million in Fiscal Year 2010 (the 12-month period beginning July 1, 2009, and ending June 30, 2010) and is required to make the accelerated sales tax payment. Dealer goes out of business effective December 1, 2010.

Dealer would not be required to make the accelerated sales tax payment.

Example 4:

Dealer was organized as a corporation and had taxable sales of \$5.4 million in Fiscal Year 2010 (the 12-month period beginning July 1, 2009, and ending June 30, 2010) and is required to make the accelerated sales tax payment. Dealer reorganizes his business as a limited liability company effective December 1, 2010.

Dealer would be required to make the accelerated sales tax payment.

Accelerated Sales Tax Payment and Reconciliation

On or about June 1 of each year that a Dealer is subject to the accelerated sales tax payment requirement, TAX will mail the Dealer a notice and voucher listing the amount of the accelerated payment due. Unless the dealer has received a hardship waiver from TAX (see below), the amount due will be equal to 90 percent of his Retail Sales and Use Tax liability for the previous June. The accelerated sales tax payment will be due on June 25 (June 27 for 2011) for Dealers paying by mail and on June 30 for Dealers paying electronically. TAX will not bill an account with a tax liability that is *de minimus*. Each mailing will also contain a reconciliation worksheet (see below). If a Dealer does not receive a mailing and believes that he is liable to make the accelerated sales tax payment, he should contact TAX at (804) 367-8037 for assistance. Live Chat assistance is available at www.tax.virginia.gov or <https://www.business.tax.virginia.gov>. In July, Dealers will reconcile their actual tax liability for June against the accelerated payment using their regular filing procedures. If a Dealer files electronically using iFile or Web Upload, TAX will automatically reconcile the Dealer's tax liability. If a Dealer

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files by mail, the Dealer should fill out his regular June Retail Sales and Use Tax return and compute his actual **tax liability for June** on the return, without regard to the accelerated sales tax payment. The Dealer should then use the reconciliation worksheet to subtract the amount of the accelerated sales tax payment from his actual June Retail Sales and Use Tax liability to determine the amount of the payment due with the return. The Dealer will be responsible for filing his regular June Retail Sales and Use Tax return and paying the amount due on or before July 20. TAX will verify that the accelerated sales tax payment and the payment made with the June return equal the actual tax liability shown on the June return. If the accelerated payment creates an overpayment for June, the Dealer should follow the same procedure for the July return due in August. To the extent that a Dealer is not able to claim the credit in its entirety on the July return, TAX will automatically issue the Dealer a refund.

Example 5:

Dealer had taxable sales of \$5.4 million in Fiscal Year 2010 (the 12-month period beginning July 1, 2009, and ending June 30, 2010) and is required to make the accelerated sales tax payment. The Dealer's Retail Sales and Use Tax liability for June 2010 was \$10,000. Dealer's actual sales and use tax liability for June 2011 is \$11,000.

In June 2011, Dealer will be required to make an accelerated sales tax payment of \$9,000 ($\$10,000 \times 0.9$). By July 20, 2011, Dealer will file his regular June Retail Sales and Use Tax return showing his actual tax liability for June of \$11,000 and remit a payment of \$2,000, the difference between his actual Retail Sales and Use Tax liability for June, 2011 and his accelerated sales tax payment ($\$11,000 - \$9,000 = \$2,000$).

Example 6:

Dealer had taxable sales of \$5.4 million in Fiscal Year 2010 (the 12-month period beginning July 1, 2009, and ending June 30, 2010) and is required to make the accelerated sales tax payment. The Dealer's Retail Sales and Use Tax liability for June, 2010 was \$10,000. Dealer's actual sales and use tax liability for June, 2011 is \$8,000. The Dealer's actual sales and use tax liability for July, 2011 is \$9,000.

In June 2011, Dealer will be required to make an accelerated sales tax payment of \$9,000 ($\$10,000 \times 0.9$). By July 20, Dealer will file his June Retail Sales and Use Tax return showing his actual tax liability of \$8,000 and remit no payment with the June return, as his accelerated sales tax payment was greater than his actual Retail Sales and Use Tax liability for June, 2011 by \$1,000. On his July Retail Sales and Use Tax return, the Dealer would show his actual tax liability of \$9,000 and remit a payment of \$8,000, the difference between his actual Retail Sales and Use Tax liability for July, 2011 and the remaining credit from the accelerated sales tax payment ($\$9,000 - \$1,000$).

Dealers may remit the accelerated sales tax payment and file returns online through iFile or Web Upload or by mail. More information regarding iFile and Web Upload may be found on TAX's website, www.tax.virginia.gov, or TAX's Online Services for Businesses page, www.business.tax.virginia.gov.

Penalties and Interest

Except with respect to fraudulent returns, the failure to make a timely and full payment of the accelerated sales tax will subject the Dealer to a penalty of six percent of the amount of tax underpayment. No other penalty for delinquent returns or payments will apply. (Source: Item § 3-5.08, *Acts of Assembly* 2011, Chapter 890)

In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of this tax, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of this tax, a penalty of 50 percent of the amount of the proper tax shall be assessed. (Source: *Va. Code* § 58.1-635(A))

The rate of interest on omitted taxes and assessments is the "Underpayment Rate" established pursuant to *Va. Code* § 58.1-15. (Source: Item § 3-5.08, *Acts of Assembly* 2011, Chapter 890)

Dealers are also responsible for timely filing their return and paying the tax due for May on or before June 20 and their return for June on or before July 20. Failure to file or pay the full amount of tax due by the due date will result in the assessment of a penalty of six percent per month in addition to the tax owed. The maximum penalty is 30 percent, and the minimum penalty is \$10.00. The minimum penalty applies to late returns even if there is no tax owed.

Hardship Exceptions

The Tax Commissioner may waive the requirement for Dealers to make the accelerated sales tax payment or allow the Dealer to pay a lesser amount upon a finding that the accelerated payment requirement would cause an undue hardship. Any Dealer otherwise required to make an accelerated sales tax payment must request a waiver from the Tax Commissioner in writing and clearly demonstrate the nature of the hardship with documentation and financial records. In general, if the Dealer can show an undue hardship, the Tax Commissioner will allow the Dealer to make an accelerated sales tax payment equal to 90 percent of the Dealer's average monthly Retail Sales and Use Tax liability for the first quarter of the current calendar year. Undue hardship would include, but is not limited to:

- The selling or closing of a significant part of the Dealer's business that results in the Dealer's sales and use tax liability in current months being substantially lower than his liability for the previous June;
- A substantial decline in sales since the previous June;

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- Extenuating circumstances, such as a major change in the Dealer's business model, such that the accelerated payment amount would cause a financial hardship on the Dealer;
- Out-of-state Dealers who no longer make sales in Virginia;
- A Dealer who is primarily eligible for the accelerated sales tax payment because of a one-time extraordinary event in the previous fiscal year;
- A Dealer whose tax liability for the previous June included a one-time extraordinary event.

The Tax Commissioner will not waive the requirement for payment of the accelerated sales tax payment except for in extraordinary circumstances

Example 7:

In June 2010, Dealer was a retailer and had a Retail Sales and Use Tax liability for the month of \$10,000. However, sales for the Dealer have significantly dropped and Dealer's average monthly sales and use tax liability for the first quarter of calendar year 2011 was \$1,000.

Dealer may request in writing a waiver from the Tax Commissioner and provide any necessary documentation to demonstrate the drop in taxable sales. The Tax Commissioner may grant the Dealer a waiver and Dealer's accelerated sales tax payment will be \$900.

Example 8:

In June 2010, Dealer was both a wholesaler and a retailer and had a Retail Sales and Use Tax liability for the month of \$10,000. In January 2011, Dealer closed down his retail locations and now only sells at wholesale. Dealer has had no sales tax liability since December 2010.

Dealer may request in writing a waiver from the Tax Commissioner and provide any necessary documentation to show the change in his business structure. The Tax Commissioner may grant the Dealer a waiver, and the Dealer will be relieved of his responsibility to make an accelerated sales tax payment.

Hardship waiver requests must be accompanied by full and complete documentation containing sufficient information so that the grounds upon which the Dealer relies in requesting a hardship waiver are fully set forth to allow the Tax Commissioner to make an informed determination.

Dealers should make every effort to submit requests for waivers as soon as possible in order to receive a timely decision from TAX. However, all requests for hardship waivers

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must be received by TAX by June 10. Applications for hardship waivers should be mailed to:

Tax Commissioner
Virginia Department of Taxation
Post Office Box 5771
Richmond, Virginia 23220-0771

Applications for hardship waivers may also be sent by fax to (804) 254-6119. TAX is not responsible for delays resulting from a Dealer using other addresses or fax numbers.

Until a Dealer who is otherwise required to make an accelerated sales tax payment is notified by TAX that he may pay a different amount or is not required to make an accelerated sales tax payment, the Dealer must make an accelerated sales tax payment equal to 90 percent of his Retail Sales and Use Tax liability for the previous June on or before June 25 (June 27 for 2011) if paying by mail and on or before June 30 if paying electronically.

Requests for Reconsideration

In cases where a Dealer is able to demonstrate that TAX's determination on its request for a hardship exception was not based on correct or complete facts, the Dealer may request reconsideration of TAX's determination. Requests for reconsideration should be mailed to:

Tax Commissioner
Virginia Department of Taxation
Post Office Box 5771
Richmond, Virginia 23220-0771

Requests for reconsideration may also be sent by fax to (804) 254-6119.

In order for the Tax Commissioner to grant a request for reconsideration, the dealer must demonstrate one of the following:

- The facts upon which the original determination is based are misstated by the Tax Commissioner or are inaccurate, and the determination would have a different result based on a correction of the Tax Commissioner's misstatement of the facts presented or a clarification of the original facts presented in the taxpayer's request for a hardship waiver; or
- The Dealer has discovered additional evidence or documentation that was not available to the Dealer at the time the original request for a hardship waiver was

filed with TAX, and the additional evidence or documentation would produce a result different from the original determination.

Requests for reconsideration will be reviewed as time permits. Although TAX will make every effort to answer each request for reconsideration in a timely fashion, until a Dealer who is otherwise required to make an accelerated sales tax payment is notified by TAX that he may pay a different amount or is not required to make an accelerated sales tax payment, the Dealer must make an accelerated sales tax payment equal to 90 percent of his Retail Sales and Use Tax liability for the previous June by June 25 (June 27 for 2011) if paying by mail and on June 30 if paying electronically.

Disposition of Revenues

With the exception of revenues attributable to the local Retail Sales and Use Tax imposed at the rate of 1%, all revenues collected from the accelerated sales tax payment will be considered General Fund revenue. However, no distribution of the state or local Retail Sales and Use Tax revenues will be made until the Tax Commissioner certifies the revenues. The Tax Commissioner shall certify the Retail Sales and Use Tax revenues generated by the accelerated sales tax payments as soon as practicable after the funds have been paid into the state treasury in any month for the preceding month. If the Governor determines on July 31 of each year that funds are available to transfer the state Retail Sales and Use Tax revenues in accordance with *Va. Code* §§ 58.1-638 and 58.1-638.1, he shall direct the State Comptroller to make such allocation. (Source: Item § 3-5.08, *Acts of Assembly* 2011, Chapter 890)

Additional Information

These Guidelines are available on-line in the Tax Policy Library section of TAX's website, located at www.policylibrary.tax.virginia.gov. For additional information, please contact TAX at (804) 367-8037 or visit www.tax.virginia.gov. Live Chat assistance is available at www.tax.virginia.gov or <https://www.business.tax.virginia.gov>.

Approved:



Craig M. Burns
Tax Commissioner